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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/779,989	02/17/2004	Lisa Starr	STRR/0004.C1	8890
26290	7590	08/12/2005	EXAMINER	
MOSER, PATTERSON & SHERIDAN, L.L.P.			CHOI, STEPHEN	
3040 POST OAK BOULEVARD			ART UNIT	
SUITE 1500			PAPER NUMBER	
HOUSTON, TX 77056			3724	

DATE MAILED: 08/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/779,989

Applicant(s)

STARR, LISA

Examiner

Stephen Choi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 June 2005.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 20-40 is/are pending in the application.  
4a) Of the above claim(s) 21-23, 25-32 and 35-40 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 20, 24, 33 and 34 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 17 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Newly submitted claims 36-40 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the invention of the newly submitted claims is distinct from the invention originally claimed because the invention originally claimed does not require a transparent housing set forth in claims 36 and 40 and an inner rib having a specific diameter set forth in claim 40.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 36-40 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 20, 24, and 33-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morbeck (US 3,380,608).

Morbeck discloses the invention substantially as claimed including an elongated housing member having an inner cavity, a longitudinal housing axis (Figure 1), an open housing end (at 24, 25), a closed housing end (at 20, 21), side walls having an outer

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housing surface and an inner housing surface (22, 23), and a lid (16). Morbeck fails to disclose at least one inner rib as claimed. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide at least one inner rib as claimed on the container of Morbeck since the use of inner ribs is old and well known in the container art for the purpose of adding strength to container walls as evidenced by Milton et al., Swanson et al., and Uhlig. Regarding claim 24, two sections (11, 12). In particular, Milton shows an inner rib circumscribing at least a portion of the inner housing surface proximate an open housing end.

#### ***Response to Arguments***

4. Applicant's arguments filed 06 June 2005 have been fully considered but they are not persuasive.

The examiner acknowledges applicant's request to provide evidence supporting the asserted Official Notice and provides evidence as set forth above. Furthermore, applicant contends that there is no evidence that it is common knowledge to add a rib to an ampoule opener having a cavity shaped to receive a portion of an ampoule in such a way the rib is to encircle and clamp the neck portion of the ampoule.

The claims merely call for "an inner cavity **shaped to receive** a portion of an ampoule" and "the at least one inner rib...has an inner diameter **sized to receive** the neck portion of the ampoule". The modified device of Morbeck meets all structural limitations and is capable of performing the recited function (i.e., ampoule opener) since the inner cavity is **shaped to receive** a portion of an ampoule and an inner diameter of the rib is **sized to receive** the neck portion of the ampoule as claimed. The claims do

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not call for the rib having an inner diameter to encircle and clamp a neck portion of an ampoule having specific size or of specific type.

***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Choi whose telephone number is 571-272-4504. The examiner can normally be reached on Monday-Friday 9:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on 571-272-4514. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SC  
10 August 2005

  
**STEPHEN CHOI**  
**PRIMARY EXAMINER**